

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

ATLANTIC CASUALTY INSURANCE
COMPANY

CIVIL ACTION

VERUS

NO.

RAYMOND W. DAVIS CONSTRUCTION,
INC., LELAND KUYPER, JODY WALKER,
RONNY WALKER, MARILYN LOFTUS AND
LYNN LOFTUS

JUDGE

MAGISTRATE JUDGE

COMPLAINT

ATLANTIC CASUALTY INSURANCE COMPANY, (Atlantic Casualty) brings this Complaint against RAYMOND W. DAVIS CONSTRUCTION, INC., LELAND KUYPER, JODY WALKER, RONNY WALKER, MARILYN LOFTUS AND LYNN LOFTUS (hereinafter sometimes referred to as "Defendants"), and avers that:

1. This is an action for declaratory relief pursuant to 28 USC §§2201. Atlantic Casualty seeks a declaration that it does not provide coverage to Raymond W. Davis Construction, Inc. or its employee, Leland Kuyper, for the claims of Marilyn Loftus and Lynn Loftus brought suit against them or for the claims of any party, particularly Jody Walker and/or Ronny Walker, who could bring suit against them in the First Judicial District Court, State of Louisiana, styled *Marilyn Loftus and Lynn Loftus v. Leland Kuyper and Raymond W. Davis Construction, Inc.*, Docket No. 530-229 (hereinafter referred to as the Loftus Lawsuit) and that it does not owe a defense to Raymond W. Davis Construction, Inc. or Leland Kuyper against the claim.

I. THE PARTIES

2. Atlantic Casualty incorporates all of the allegations contained in the foregoing numbered paragraph as though set forth fully herein.

3. Atlantic Casualty is an insurance company incorporated in the State of North Carolina, with its principal place of business in Goldsboro, North Carolina. Atlantic Casualty is authorized to do business in North Carolina and is doing business in Louisiana.

4. Raymond W. Davis Construction, Inc. is a Louisiana corporation domiciled at 8324 S. Satinwood Drive, Greenwood, LA 71033.

5. Leland Kuyper is a Louisiana domiciliary, whose work address is 8324 South Satinwood Drive, Greenwood, LA 71033.

6. Jody Walker and Ronny Walker are Louisiana domiciliaries residing at 440 Braemer Road, Shreveport, Louisiana.

7. Marilyn Loftus and Lynn Loftus are Louisiana domiciliaries residing at 9624 Paula Street, Keithville, LA 71047.

II. JURISDICTION AND VENUE

8. Atlantic Casualty incorporates all of the allegations contained in the foregoing numbered paragraphs as though set forth fully herein.

9. The amount in controversy exceeds \$75,000, exclusive of interest and costs. Complete diversity exists between Atlantic Casualty on the one hand and Defendants on the other hand.

10. Venue is proper under 28 U.S.C. §1391(a)(1) and (2).

11. This action involves a justiciable case or controversy because Atlantic Casualty seeks a determination of its obligation to indemnify Defendants under the policy of insurance that Atlantic Casualty issued to the Raymond W. Davis Construction, Inc. and its duty to defend.

III. THE CLAIMS OF LOFTUS

12. Atlantic Casualty incorporates all of the allegations contained in the foregoing numbered paragraphs as though set forth fully herein.

13. Marilyn Loftus and Lynn Loftus allege that Marilyn Loftus was injured while she was employed by Danny Corley Painting at a construction site when she fell down temporary stairs erected by Leland Kuyper, an employee of Raymond Davis Construction, Inc.

14. Marilyn Loftus and Lynn Loftus allege that at the time of the alleged accident Raymond Davis Construction, Inc. was a subcontractor of the General Contractor.

15. Marilyn Loftus and Lynn Loftus allege that at the time of the alleged accident, Danny Corley was a subcontractor of the General Contractor.

16. Marilyn Loftus and Lynn Loftus allege that Jody Walker and Ronny Walker were the homeowners and General Contractor on the job at 440 Braemer Road, Shreveport, Louisiana.

IV. THE POLICY

A. THE RAYMOND W. DAVIS CONSTRUCTION, INC. INSURANCE POLICY

17. Atlantic Casualty incorporates all of the allegations contained in the foregoing numbered paragraphs as though set forth fully herein.

18. Atlantic Casualty issued policy L032000908-4 comprehensive general liability insurance to Raymond W. Davis Construction, Inc. in effect for the period April 12, 2008 to April 12, 2009.

19. The Atlantic Casualty policy includes the following exclusions which exclude coverage for the claim of plaintiffs:

**EXCLUSION OF INJURY TO EMPLOYEES,
CONTRACTORS AND EMPLOYEES OF CONTRACTORS**

Exclusion e. Employer's Liability of Coverage A. Bodily Injury and Property Damage Liability (Section I-Coverages) is replaced by the following:

This insurance does not apply to:

- (i) "bodily injury" to any "employee" of any insured arising out of or in the course of:
 - (a) Employment by any insured; or
 - (b) Performing duties related to the conduct of any insured's business;
- (ii) "bodily injury" to any "contractor" arising out of or in the course of the rendering or performing services of any kind or nature whatsoever by such "contractor" for which any insured may become liable in any capacity; or
- (iii) "bodily injury" sustained by the spouse, child, parent, brother or sister of any "employee" of any insured, or of a "contractor", as a consequence of any injury to any person as set forth in paragraphs (i) and (ii) of this endorsement.

This exclusion applies to all claims and "suits" by any person or organization for damages because of "bodily injury" to which this exclusion applied including damages for care and loss of services.

This exclusion applies to any obligation of any insured to indemnify or contribute with another because of damages arising out of "bodily injury" to which this exclusion applies, including any obligation assumed by an insured under any contract.

With respect to this endorsement only, the definition of "Employee" in the DEFINITIONS (Section V) of CG0001 is replaced by the following:

"Employee" shall include, but is not limited to, any person or persons hired, loaned, leased, contracted, or volunteering for the purpose of providing services to or on behalf of any insured, whether or not paid for such services and whether or not an independent contractor.

As used in this endorsement, “**contractor**” shall include but is not limited to any independent contractor or subcontractor of any insured, any general contractor, any developer, any property owner, any independent contractor or subcontractor of any general contractor, any independent contractor or subcontractor of any developer, any independent contractor or subcontractor of any property owner, and any and all persons working for and or providing services and or materials of any kind for these persons or entities mentioned herein.

All other terms and conditions remain unchanged.

AGL-055 8/05

LIMITATION – DUTY TO DEFEND

Where there is no coverage under this policy, there is no duty to defend any insured. We are entitled to all rights of reimbursement from you or any insured or indemnitee for sums paid under this policy if it is determined that there is no coverage under the terms, conditions or exclusions of this policy.

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EXCLUSION – VOLUNTEER WORKERS

B. Paragraphs 2.a. and 2.b. of Section II – Who is an Insured are replaced by the following:

1. Each of the following is also an insured:

a. You “employees”, other than either your “executive officers” (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to conduct of your business. However, none of these “employees” is an insured for:

(1) “Bodily injury” or “personal and advertising injury”:

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-“employee” or while that co-“employee” is either in the course of his or her employment or performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-“employee” as a consequence of Paragraph (1)(a) above;

- (c) For which there is any obligation to share damages with or repay someone who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or arising out of his or her providing or failing to provide professional health care services.
- (2) "Property damage" to property:
 - (a) Owned, occupied or used by,
 - (b) Rented to, in the care, custody and control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", any partner or member (if you are partnership or joint venture), or any member (if you are a limited liability company).

b. Any person (other than your "employee"), or any organization while acting as your real estate manager.

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WHEREFORE, Atlantic Casualty Insurance Company, prays that after due proceedings have been had that there be judgment in its favor and against defendants declaring that the Commercial Liability insurance policy issued by Atlantic Casualty Insurance Company to Raymond W. Davis Construction, Inc. does not provide coverage for the claims of Marilyn Loftus and Lynn Loftus or for any claim which could be brought by Jody Walker and/or Ronny Walker to Raymond W. Davis Construction, Inc. or Leland Kuyper and further, that Atlantic Casualty Insurance Company does not have a duty to defend Raymond W. Davis Construction, Inc., or Leland Kuyper and for any other general and equitable relief the court may find proper and just.

Respectfully submitted,

VOORHIES & LABBÉ
(A Professional Law Corporation)

Mary M. Hamilton

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has this date been electronically filed with the Clerk of Court by using the CM/EFC system, facsimile, email transmission and/or depositing same in the United States Mail, postage prepaid and properly addressed.

Lafayette, Louisiana, this 12 day of March, 2010

Mary M. Hamilton
MARY M. HAMILTON

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